

WEIL, GOTSHAL & MANGES LLP

SILICON VALLEY OFFICE
201 REDWOOD SHORES PARKWAY
REDWOOD SHORES, CALIFORNIA 94065
(650) 802-3000
FAX: (650) 802-3100

AUSTIN
BOSTON
BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
MUNICH
NEW YORK
PARIS
PRAGUE
PROVIDENCE
SHANGHAI
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
(650) 802-3119
jeffrey.homrig@weil.com

August 29, 2008

The Honorable Elizabeth D. Laporte
450 Golden Gate Avenue
Courtroom E, 15th Floor
San Francisco, CA 94102

Re: *Network Appliance, Inc. v. Sun Microsystems, Inc.*
Case No. C-07-06053 EDL

Dear Judge Laporte:

I write in response to Sun's letter brief requesting an extension of the fact discovery cutoff in the above-captioned case.

During a meet and confer teleconference this morning, NetApp informed Sun that it believed that the parties could reach agreement on a discovery extension, but that this extension should be made in connection with setting a case schedule through trial. Sun refused even to discuss setting a schedule through trial, and insisted that the fact discovery cutoff be extended to mid-February in isolation. By ignoring the need to set parameters for resolving this dispute, Sun's approach is likely to unnecessarily, and unwisely, prolong this case. This result is irreconcilable with the parties' agreement, reflected in the November 21, 2007 Agreed Motion to Transfer, to a "just and speedy resolution of this case."

Sun's characterization of how the parties reached this juncture is simply not consistent with the history of document collection and production in this case. The current timeframes for collecting, reviewing, and producing documents are driven in substantial part by the overbreadth of Sun's requests and Sun's refusal to work with NetApp to identify agreed-upon search terms for electronic collection of documents. These factors have contributed dramatically to the volume of information that NetApp is

WEIL, GOTSHAL & MANGES LLP

Hon. Elizabeth D. Laporte
August 29, 2008
Page 2

collecting and processing for production. Moreover, to date, the parties have produced approximately the same number of documents: NetApp has produced approximately 500,000 pages of documents and made more than 80,000 source code files available for inspection; Sun has produced approximately 660,000 pages. In addition, NetApp has more than 100 attorneys reviewing documents on a dedicated basis to move the production as quickly as possible. NetApp is not dragging its heels. Given the scope of Sun's requests and the volume and size of the information being reviewed in response to them, it is now obvious that the parties may need to come back to the Court in the short term to establishing meaningful boundaries on the scope of Sun's discovery requests.

Nevertheless, NetApp is willing to cooperate with Sun to extend the fact discovery deadline in the context of setting a broader case schedule. The parties and the court have an interest in setting a firm schedule through trial as a means to achieve prompt resolution of this case. Accordingly, NetApp respectfully requests that the Court hold a Further Case Management Conference within the next week to set a full schedule through trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Homrig', with a stylized flourish at the end.

Jeffrey G. Homrig